

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

CHARLES E. STEWART, JR.
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

CHRISTOPHER A. AMERICANOS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTOINE WILSON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 45A03-0609-CR-410
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0508-FB-61

MAY 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Antoine Wilson (“Wilson”) appeals from the sentence imposed after he pled guilty to the Class C felony, neglect of a dependent. Ind. Code §35-46-1-4(b).

We affirm.

ISSUE

Wilson presents the following issue for our review: whether the trial court erred by imposing the presumptive sentence for a Class C felony where he had no criminal record.

FACTS AND PROCEDURAL HISTORY

Wilson, who was thirty years old at the time of the offense, had an agreement with his then girlfriend to babysit her four children while she was at work. Sometime between July 24 and July 27, 2005, Wilson severely battered his girlfriend’s two-year-old son. As a result of the injuries inflicted upon him by Wilson, the boy suffers from permanent brain damage, is confined to a wheelchair, and receives nourishment through a feeding tube.

The State charged Wilson with neglect of a dependent as a Class B felony. On May 10, 2006, Wilson and the State entered into an agreement whereby Wilson would plead guilty to neglect of a dependent as a Class C felony with an open sentence. On August 8, 2006, the trial court found that the aggravating and mitigating circumstances balanced and sentenced Wilson to four years executed.

DISCUSSION AND DECISION

Wilson appeals arguing that the trial judge abused her discretion by imposing the four-year sentence. Wilson argues that the trial court erred “in enhancing defendant’s sentence to four (4) years in prison” because he had no criminal record. Appellant’s Br. at 4. Wilson also argues that the four-year sentence was inappropriate in light of the nature of the offense and the character of the offender.

On April 25, 2005, the Indiana Legislature’s amendment of sentencing statute Ind. Code §35-38-1-7.1(d) became effective. Ind. Code §35-38-1-7.1(b) provides that the trial court may consider mitigating circumstances. However, a court may impose any sentence that is authorized by statute and permissible under the Constitution of the State of Indiana, regardless of the presence or absence of aggravating circumstances or mitigating circumstances. Ind. Code §35-38-1-7.1(d). The trial court may impose any sentence within the sentencing range without regard to the presence or absence of such circumstances. *Fuller v. State*, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006). Because the new sentencing statute provides for a range with an advisory sentence rather than a fixed or presumptive sentence, a lawful sentence would be one that falls within the sentencing range for the particular offense. *Id. citing Samaniego-Hernandez v. State*, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005).

Subject to certain legal parameters, sentencing determinations are generally committed to the trial court's discretion. *Frey v. State*, 841 N.E.2d 231, 234 (Ind. Ct. App. 2006). When a trial court finds aggravating or mitigating circumstances, it must make a statement of its reasons for selecting the sentence imposed. *Id.*; Ind. Code §35-

38-1-3. The trial court need not set forth its reasons, however, when imposing the presumptive sentence. *Frey*, 841 N.E.2d at 234.

In the present case, Wilson received the advisory sentence for a Class C felony. Ind. Code §35-50-2-6 provides that the sentencing range for a Class C felony is two years to eight years with the advisory sentence being four years. Therefore, because Wilson's sentence fell within the sentencing range it is a lawful sentence.

Even though Wilson received the advisory sentence, the trial court in this case articulated the aggravating and mitigating circumstances found. Wilson specifically challenges the trial court's finding that Wilson has a significant disregard for the law based upon past contact with the criminal justice system when Wilson has no prior criminal record.

The record reveals that the trial court stated as follows during the sentencing hearing:

The Court will find that you have no juvenile and no adult convictions, but that your character is one—in the past, there's been significant disregard for the law based on the amount of contacts that you have had with the criminal justice system.

As a mitigator, the court is going to find that you don't have any history, that you did accept responsibility in this matter and entered into a guilty plea.

In aggravation, we're going to find the child's age and that you were in a position of care and custody for the child at the time this incident occurred. . .

Tr. 39. The trial court then found that the aggravating and mitigating circumstances were in equipoise and sentenced Wilson to the advisory sentence of four years executed.

The trial judge stated that “the sentence range for a Class C felony is two to eight years. My intention was to sentence you to the presumptive sentence, which is the sentence I gave.” Tr. 41.

The pre-sentence investigation report reveals that Wilson had fourteen contacts with Illinois law enforcement since he was eighteen years old, eight of which were for assault or battery. When the trial judge made reference to Wilson’s multiple contacts with law enforcement it was in reference to Wilson’s character. The trial judge made a separate finding in mitigation that Wilson had no prior criminal history. Wilson’s argument is without merit.

Wilson has failed to develop the argument pursuant to Ind. Appellate Rule 7(B). However, given the trial court’s determination that the aggravating and mitigating circumstances equally balanced, an advisory sentence seems appropriate given the nature of the offense and the character of this offender.

CONCLUSION

The trial court did not err by imposing the advisory sentence for Class C felony neglect of a dependent.

Affirmed.

BARNES, J., and CRONE, J., concur.